

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

TRANSCRIPT OF SENTENCING
BEFORE GREG KAYS
UNITED STATES DISTRICT JUDGE

APPFARANCES:

For Defendant: Jonathan D. Truesdale
[Defendant present.] Jonathan D. Truesdale, LLC
104 West 9th Street
Suite 401
Kansas City, Missouri 64105

Regina A. Lambrecht, RDR, CRR
Official Court Reporter
400 East 9th Street, Room 8652
Kansas City, MO 64106
816.512.5623

24 Proceedings recorded by mechanical stenography, transcript
25 produced by computer.

1 (Begin proceedings in open court at 9:31 a.m.)

2 THE COURT: Mr. Carnes, would you please take --

3 THE DEFENDANT: (Indiscernible.)

4 THE COURT: Would you please put your mic -- your
5 face mask on for us?

6 THE DEFENDANT: Why do I got to put my mask on? Why
7 do I got -- they already (indiscernible).

8 THE REPORTER: I can't hear him.

9 THE COURT: Hold on. This is Case 16-264-01, *United*
10 *States of America versus Keith L. Carnes.*

11 Mr. Carnes, we're requiring people to wearing masks
12 if they don't have plexiglass in front of them. So I have
13 plexiglass. I don't have a mask on right now. We require you
14 to put a mask on. Will you do that for us?

15 THE DEFENDANT: Put a mask on?

16 THE COURT: You have a mask hanging on your right
17 ear.

18 THE DEFENDANT: I'm not wearing a mask. What do I
19 need to wear a mask for?

20 THE COURT: If you don't wear a mask we're going to
21 remove you from the courtroom, Mr. Carnes.

22 THE DEFENDANT: Put a mask on, sir? That's crazy.
23 I don't have a problem, you know what I'm saying? This Corona
24 stuff. I got Corona stuff. I don't have any problems with
25 this stuff. You know, like I'm having you -- know what I'm

1 saying?

2 THE COURT: Thank you.

3 I note that Mr. Carnes has put his mask on.

4 Thank you, Mr. Carnes.

5 This case is called today for a sentencing hearing.

6 Mr. Carnes appears here today with his attorney in this case,
7 Mr. Jonathan Truesdale. Also appearing today is Assistant
8 United States Attorney, Mr. Trey Alford. Also appearing today
9 is Detective Rorabaugh from the Kansas City, Missouri Police
10 Department. Also appearing today at counsel table is
11 Ms. Susanne Holland, our paralegal for the U.S. Attorney's
12 office. Also appearing today is United States probation
13 officer, Mr. Kurt Habiger.

14 This case is called today, as I said, for a
15 sentencing hearing.

16 Mr. Carnes, his case was tried to a jury.

17 THE DEFENDANT: I'm trying to get -- I got these
18 handcuffs on and (indiscernible) I -- I --

19 THE COURT: Hold on. Hold on. Mr. Carnes, you must
20 be quiet until I ask you to talk. Otherwise you got to leave.
21 Please have a seat. I expect the marshals to tell you when
22 you can stand or not stand.

23 THE DEFENDANT: All right.

24 THE COURT: Mr. Carnes, the marshals are in charge
25 of security in the courtroom. I defer to their expertise.

1 Please listen to them and be respectful. Mr. Carnes, you have
2 your hand up. What is it you want --

3 THE DEFENDANT: I ask, Kays, I've not been no
4 problems in the courtroom. I --

5 THE REPORTER: Excuse me. Can we move the
6 microphone?

7 THE COURT: Hold on. Can we move a microphone?

8 THE DEFENDANT: I just ask, Kays, like I haven't
9 cause no problem in your courtroom. I had -- during trial,
10 I've been respectful to you-all. I ain't acted all crazy.
11 Like I don't want you to think I'm a monster or animal. You
12 know what I'm saying? Like this lawyer right here, we have
13 every possible -- irreconcilable differences. We is not on
14 the same page.

15 THE COURT: Stop. Stop. Stop. You're going to
16 have a chance to talk. Right now I have to do a couple things
17 before I give you a chance to talk.

18 THE DEFENDANT: Yeah. But I want to let you know,
19 we ain't talked about -- this lawyer ain't came to talk to me
20 or nothing. I haven't seen him since trial.

21 THE COURT: Stop talking for just a minute,
22 Mr. Carnes. I'm -- I'm going to be the one who tells you when
23 you can talk and when you can't talk. That's the way it works
24 for everybody. You can't talk right now. Stop for just a
25 minute. Let me go through this with you.

1 I note that this case was tried to a jury for three
2 days from November 4th to November 6, 2019. At that time this
3 defendant was found guilty in Count 1, being a felon in
4 possession of a firearm; in Count 2, being an unlawful user of
5 a controlled substance in possession of a firearm; in Count 3,
6 the same crime as Count 2 but at a different time, unlawful --
7 being a drug user in possession of a firearm as well. The
8 jury returned verdicts of guilty as I said. This Court
9 ordered -- this Court ordered a presentence investigation to
10 be completed, and that has been accomplished.

11 Today my first responsibility is to calculate the
12 guideline calculations. But before I do that, Mr. Carnes has
13 filed a motion to proceed pro se. That is document 109. I
14 have filed a order, which is document 118 concerning this. In
15 order for me to allow Mr. Carnes to proceed pro se, I have to
16 ask him questions. And if he can answer those questions we
17 can talk about that. But he doesn't get to talk right now
18 other than address or respond to my questions.

19 Mr. Carnes, I note that we've already been through
20 this with you before on October 29th, 2019. It was a pretrial
21 conference before the trial. In that pretrial conference we
22 took up your motion to proceed pro se. You filed this before.
23 And you, at that time, decided to use Mr. Truesdale as your
24 attorney and proceed with counsel.

25 So at that time I made an entry that -- hold on. I

1 promise you, Mr. Carnes, you'll be able to talk. The
2 defendant indicated that he no longer wishes to proceed pro
3 se. That was at -- from 2:02 p.m. to 2:30 -- 2:53 p.m. on
4 October 29th. So we had a trial. And now you filed other
5 motions to proceed pro se. So I have to ask you some
6 questions.

7 Will you answer my questions first, Mr. Carnes?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Okay. So at this time the questions are
10 pretty much the same questions I probably asked you before.
11 Have you -- do you have any education in the law?

12 THE DEFENDANT: High school diploma, yeah.

13 THE COURT: In high school you did?

14 THE DEFENDANT: Yeah. High school diploma, Seton
15 Center, 2009.

16 THE COURT: Okay. Have you -- do you have any
17 understanding of the Federal Rules of Criminal Procedure?

18 THE DEFENDANT: I've been learning.

19 THE COURT: I'm sorry, sir?

20 THE DEFENDANT: I've been learning them.

21 THE COURT: You've been learning them since you've
22 been incarcerated?

23 THE DEFENDANT: Yeah. I've been learning and
24 studying them. Yes, sir.

25 THE COURT: Okay. Do you understand how the Court

1 undertakes sentencing hearings, the process that we use to
2 conduct a sentencing hearing, Mr. Carnes?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you understand the range of
5 punishment in this case is not more than 10 years on all three
6 counts, and these 10 year sentences could be ran consecutive
7 if you're sentenced to those terms for a total of 30 years?
8 You could go to prison for 30 years in a case like this. Do
9 you understand that?

10 THE DEFENDANT: I -- I thought -- I read something
11 different on a PSI, they ran them concurrent. You're saying
12 that's -- that's if you wanted to run them consecutive?

13 THE COURT: No. I said that your exposure, your --
14 your liability could be up to 30 years in prison on this case.
15 Do you understand that?

16 THE DEFENDANT: Yeah. I understand that.

17 THE COURT: Okay. Do you understand that if you
18 decide to proceed pro se today, you don't get any privileges
19 extra other than -- other than being treated like an attorney
20 basically in how you conduct your case?

21 THE DEFENDANT: Yeah.

22 THE COURT: You understand that if you speak out and
23 talk when you're not allowed to, you could be removed from the
24 courtroom and you can't -- you won't be part of this hearing
25 in that case? Do you understand that?

1 THE DEFENDANT: Yes, I understand.

2 THE COURT: And you understand that any time during
3 that hearing if I feel like you're not following the rules,
4 we'll ask your standby counsel, Mr. Truesdale, to assume the
5 leadership that -- the lead in your case? Do you understand
6 that?

7 THE DEFENDANT: Yeah. I understand that but I will
8 not like that.

9 THE COURT: That's all right. You don't have to
10 like any of this, right?

11 THE DEFENDANT: Yeah.

12 THE COURT: I'm just trying to make sure you
13 understand it.

14 THE DEFENDANT: Yeah. I don't want Mr. Truesdale.
15 I don't want no ties with them. He's on their side. He's
16 working with them (indicating).

17 THE COURT: You see, this is an example where you're
18 not responsive. I want you to answer my questions. If you
19 can't answer my questions, you can't --

20 THE DEFENDANT: I'm answering -- I'm answering,
21 Judge Kays.

22 THE COURT: No. No, you're not, Mr. Carnes. Listen
23 closely to the questions, respond to the questions. Don't
24 give me any of your editorial. I'll let you editorialize
25 later, okay?

1 THE DEFENDANT: Yeah.

2 THE COURT: You get a chance -- so you understand,
3 Mr. Carnes, when we're done here, you will get a chance to
4 have the last word before I pronounce sentence. At that time
5 you can talk. You understand that?

6 THE DEFENDANT: So I can say -- you're saying I get
7 to talk only after you finish with my sentence?

8 THE COURT: Yes, sir.

9 THE DEFENDANT: So I don't get to object and say
10 nothing and go at my things? That's what I supposed to do
11 is --

12 THE COURT: You're illustrating a very poor
13 understanding of how sentencing hearings work, Mr. Carnes.

14 THE DEFENDANT: That's how I was supposed to go as
15 pro se, sir. I'm supposed to work my own case, and I object
16 to everything.

17 THE COURT: Stop talking. Stop talking. Now, so
18 Mr. Carnes, I don't feel like you really understand how a
19 sentencing hearing works. I think based on the way I
20 understand the *Faretta* case, which is the -- kind of a
21 landmark case about pro se representations, which I think you
22 may have even cited in your materials, Mr. Carnes, you do have
23 a right to -- no. Stop talking.

24 THE DEFENDANT: I'm trying.

25 THE COURT: You do have a right to proceed pro se

1 for a period of time. I will be very quick to withdraw that
2 right or terminate that right if we have problems. You
3 understand that? Say yes or no.

4 THE DEFENDANT: Yes, sir. Yes, sir, Mr. Kays.

5 Judge Kays.

6 THE COURT: Okay. So at this time my job first is
7 to calculate these guideline calculations, to make the
8 guideline calculations. And I will look forward to -- well,
9 the problem is Mr. Truesdale is an expert in this, and he's
10 not -- he's on standby right now. Mr. Alford is an expert in
11 this. Do you have any expertise in sentencing guideline
12 calculations, Mr. Carnes?

13 THE DEFENDANT: Yeah, I got my own expert
14 calculations.

15 THE COURT: Okay. Very well. So let's do this
16 then. Let's go through this PSR. So at this time I am going
17 to -- I'm going to sustain his motion to proceed pro se. So
18 he can proceed at this time.

19 Mr. Truesdale, I'm going to appoint you standby
20 counsel. And you may very well go to work here very quickly.

21 MR. TRUESDALE: Yes, Your Honor.

22 THE COURT: All right. So the United States
23 probation office has recommended the Court adopt the following
24 guideline calculations: A total offense level of 24, a
25 criminal history category of IV; a guideline range of 77 to 96

1 months; a supervised release range of one to three years; a
2 fine range of 20,000 to \$200,000; a special assessment of \$100
3 per each count for \$200 total.

4 Mr. Alford, does the government agree with those
5 calculations?

6 MR. ALFORD: Yes, Your Honor.

7 THE COURT: Mr. Carnes, do you agree with those
8 calculations?

9 THE DEFENDANT: Where did it say, sir?

10 THE COURT: I'm sorry?

11 THE DEFENDANT: I say, where is that at? I'm --

12 THE COURT: I just said it. I just said it on the
13 record for you to hear, Mr. Carnes.

14 THE DEFENDANT: Can you repeat it one more time,
15 sir?

16 THE COURT: I'll be happy to. The total offense
17 level is 24, the criminal history category is IV. The
18 guideline range is 77 to 96 months. The supervised release
19 range is one to three years. The fine range is 20,000 to
20 \$200,000. There is a special assessment of \$100 per count,
21 for a total of \$200 mandatory special assessment.

22 Do you understand that is what the United States
23 probation office has recommended the Court adopt as the
24 guidelines in your case? Do you have any objection to those
25 guidelines?

1 THE DEFENDANT: Yes.

2 THE COURT: Okay. What is your objection?

3 THE DEFENDANT: Can you hold on just a second, sir?

4 THE COURT: I sure can.

5 THE DEFENDANT: Can I ask you, can I remove one
6 handcuff so I have more --

7 THE COURT: No.

8 THE DEFENDANT: -- moving around with papers,
9 please?

10 THE COURT: Let's make sure we're clear on that and
11 the record is clear. This Court defers to the marshal service
12 for all security issues. They are security professionals.
13 This is what they do. They have decided that you will be
14 handcuffed, and your legs shackled for the record. I think
15 part of this has to do with the fact there's alleged -- an
16 alleged assault against a corrections officer while you were
17 incarcerated, which I understand we'll hear about, and it's
18 part of the second addendum.

19 THE DEFENDANT: That's -- I'd like to object to
20 that.

21 THE COURT: Sure. But that's not -- that's not the
22 question. You're not responding to the question. The
23 question today before you right now is, what are your
24 objections to the sentencing guidelines, sir?

25 THE DEFENDANT: My objections is that the four

1 points enhancement of the Terrence Walls -- that Terrence
2 Walls said I shot at him. They you -- they give you four
3 points enhancement on this. That --

4 THE COURT: Why don't you sit down and talk in the
5 microphone so I can hear you. Please keep your mask on.

6 THE DEFENDANT: I said, it's the four points
7 enhancement with Terrence Walls. He's saying I shot at him.

8 THE COURT: Please -- please pull your mask up over
9 your nose.

10 THE DEFENDANT: Okay. It's the four points --

11 THE COURT: Over your nose, please. Okay. Go
12 ahead.

13 THE DEFENDANT: Take my time.

14 THE COURT: I note, while he's doing that, we
15 appreciate everybody wearing masks in the courtroom today. We
16 believe that's important to help us be safe here. And so
17 thank you for your agreement to do that.

18 Go ahead, Mr. Carnes.

19 THE DEFENDANT: Okay. The four points enhancement
20 for Terrence Walls saying that I shot at him, like I want to
21 object to that, like 'cause there was never no positive ID
22 pick out no line-up on -- on -- on -- on 9-24-16. I got
23 charged with this on 9-10 -- on 9-10-16, you know what I'm
24 saying? That my accident happened on August 30th, 2016. So
25 I'm in the KC marshal custody in the hospital, and got

1 released over here to the -- this -- the state -- I mean, to
2 the -- to the Jackson County. And I sat over there in Jackson
3 County for like two days, and then Agent Frank Rorabaugh came
4 and got me, you know what I'm saying? And I asked Frank
5 Rorabaugh like what's going on.

6 THE COURT: Okay. Okay. You got to -- you got to
7 put this as a legal objection. Do you have a legal objection
8 to this?

9 THE DEFENDANT: Yeah. My --

10 THE COURT: You're arguing -- you're arguing
11 factual --

12 THE DEFENDANT: My legal objection is -- my legal
13 objection is that the man, Terrence Walls, never positively
14 identified me as a line-up. Mr. Truesdale, Jonathan Truesdale
15 failed to explain himself -- failed to --

16 THE COURT: Okay. Okay. Hold on. Hold on. Stop.
17 Stop. Your objections are overruled. Do you have any other
18 legal objections?

19 THE DEFENDANT: It's just that -- it's just the four
20 points enhancement, that's all the objections that I seen --
21 take my time. Let go through something a little bit.

22 THE COURT: While we're doing this --

23 THE DEFENDANT: Judge Kays.

24 THE COURT: Yes, sir.

25 THE DEFENDANT: Judge Kays, sir, I'd like to -- hold

1 on. Wait.

2 THE COURT: Take -- while you're doing that, maybe
3 would one of the marshals help us to make a record of why he's
4 shackled here today and just so the record is clear on that?

5 Would --

6 THE DEFENDANT: I never --

7 THE COURT: Hold on. Stop talking. Would one of
8 the marshals like to address that for us, maybe in a
9 microphone or maybe through the U.S. Attorney's office?

10 THE DEFENDANT: Can you address it to the Court?

11 THE COURT: Shhhh. Stop talking. I'm going to tell
12 you when you can talk. Hold on.

13 Or maybe -- if you'd rather the U.S. Attorney speak
14 for you.

15 MARSHAL SEELING: Yes, please.

16 THE COURT: Mr. Alford, sir.

17 MR. ALFORD: Why Your Honor --

18 THE COURT: Why is -- why is it that we have
19 Mr. Carnes incarc -- shackled and handcuffed here today?

20 MR. ALFORD: Well, I think there's numerous reasons
21 for this. First, it's the facts of this case that were
22 revealed at trial. He shot at Terrence Walls. Evidence of
23 that was very clear, which supports the four-level
24 enhancement. He was in a gun fight where he was shot numerous
25 times, and he discharged his weapon and it jammed, which is

1 how the weapon was found. And that led to the car accident
2 where he actually killed someone.

3 He has a prior criminal history where she shot at
4 individuals. And not only shot at them, he shot them. He was
5 successful in his aim.

6 And also with respect to his interactions with the
7 Court throughout these proceedings, he hasn't shown any
8 manners or discipline, for the most part. With some
9 exceptions, during trial I think he was for the most part.

10 THE COURT: He's a security risk?

11 MR. ALFORD: Absolutely a security risk. And I
12 think it's totally appropriate that the marshals are taking
13 precautions.

14 THE COURT: Is part of that what's listed in the
15 second addendum to the presentence investigation report, which
16 is dated September 23rd, 2020?

17 MR. ALFORD: Yes, Your Honor. And, in fact, at the
18 sentencing hearing we intend on providing evidence where the
19 defendant, apparently from a video, preyed on a female
20 corrections officer and attacked her to the point where
21 another detainee was so concerned that the detainee intervened
22 to protect the corrections officer.

23 THE COURT: I think the record is clear, and yes,
24 Deputy Marshal Scott Seeling, sir.

25 MARSHAL SEELING: I will also add that it is common

1 practice for the marshal service to produce defendants in
2 court in this district in leg shackles and handcuffs for all
3 defendants before magistrates or district judges.

4 THE COURT: Thank you, Deputy Marshal. So that's --
5 I think the record is clear now why that we're doing that, and
6 the record should also reflect that the Court -- this Court
7 does defer to the marshal service in all decisions related to
8 security.

9 All right. Any other legal objections, because I'm
10 getting ready to move on, Mr. Carnes.

11 THE DEFENDANT: Your Honor, I think these marshals
12 they took some of my paperwork out of my thing, because I'm
13 looking for the write-up. It was just in here about this
14 write-up that they're talking about with that -- this Officer
15 Bell. But they have it -- I'm looking for the write-up
16 papers. They -- they took it up out of here. They took it --
17 they just served me Monday, and the PSI, Day, the case worker
18 served me the paper that they disclosed it late Monday.

19 THE COURT: Hold on. Are you talking about the
20 second addendum that I referred to? And if so, would you like
21 a copy of mine?

22 THE DEFENDANT: Huh?

23 THE COURT: Would you like to have a copy?

24 THE DEFENDANT: Yeah, I'd like to have that copy,
25 please. They took it from me.

1 THE COURT: Okay. I'm going to show the marshal is
2 helping us by handing to Mr. Carnes the second addendum to the
3 presentence investigation report.

4 THE DEFENDANT: I'd like to object to this because
5 it's saying, according to an incident report on July 29th,
6 2019, at approximately 6:36 p.m., an emergency was called in
7 regard to a staff member being assaulted. Inmate Carnes
8 pushed --

9 THE COURT: Hold on. Hold on. Hold on. Hold on.
10 Stop. Stop.

11 THE DEFENDANT: -- his way in and grabbed
12 Correctional Officer Bell by his shirt.

13 THE COURT: You're not stopping.

14 THE DEFENDANT: He just said she.

15 THE COURT: You're not stopping.

16 THE DEFENDANT: Where are his comment?

17 THE COURT: We're going to hear some evidence about
18 that. Hold on. You've got to stop when I tell you to,
19 Mr. Carnes. You're going to --

20 THE DEFENDANT: I thought you say you were going to
21 let me play out, sir.

22 THE COURT: Stop. You -- that -- first, let's
23 establish that I've given you a copy of what you said was
24 missing; is that correct?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Okay. And you object to that? You
2 think --

3 THE DEFENDANT: Yeah, I object to that.

4 THE COURT: -- it's not factual, true?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Okay. Anything else? Any other legal
7 objections?

8 THE DEFENDANT: They're saying that it was a female
9 officer. On this paper it's saying it's a male officer. This
10 ain't right. They got to correct this, Your Honor.

11 THE COURT: Any -- any other legal objections?

12 THE DEFENDANT: Other legal objections with the four
13 points --

14 THE COURT: Sit down, please. Sit down.

15 THE DEFENDANT: The four points enhancement, you --

16 THE COURT: I've already ruled.

17 THE DEFENDANT: -- you stopped, Judge -- you stopped
18 Truesdale when he was questioning Ter -- David -- Detective
19 David Kissee on the stand. You made a big huge mistake, Judge
20 Kays.

21 THE COURT: Let's take him out of the courtroom.

22 THE DEFENDANT: You made a big huge mistake, Judge
23 Kays. Like you got *Brady* violations.

24 THE COURT: I'll give you five minutes to think
25 about it and then bring you back in.

1 THE DEFENDANT: (Indiscernible) on *Brady* violations,
2 you know what I'm saying? Like you got the (indiscernible).

3 THE COURT: I'd like the record to reflect the
4 defendant is not -- he's still talking as the marshals take
5 him out of here. We're going to let him sit for five minutes
6 and see if we can bring him back in. And the Court is asking
7 -- I know there's people here in the audience that will be
8 perhaps testifying. We -- we ask for your indulgence and
9 patience in this part. It's very important that we are
10 patient with Mr. Carnes here today the best we can be. I
11 don't know if he'll be able to come back in or not, but we'll
12 certainly give him an opportunity to do that. So we'll take a
13 five-minute recess. Okay? Thank you.

14 (Recess at 9:53 until 9:59 a.m.)

15 THE COURT: All right. Let's try this again. Thank
16 you. Be seated.

17 (Defendant now present.)

18 THE COURT: Thank you, Marshals.

19 Mr. Carnes, let's just talk -- let me talk to you a
20 little bit about this. We've accomplished very little in the
21 30 minutes we've been working to conduct this hearing. What I
22 want to say to you is this: You have a right to be here, and
23 I want you to be here if you can conduct yourself, sir. I
24 really do. If you don't want to be here, though, that's all
25 right too. We can put you in a holding cell. We have one

1 available I'm told by the marshal service. There's audio
2 that's in that cell so you can hear what's going on. So if
3 you don't stop talking when I ask you to, or if you're
4 interruptive -- interrupting people or disrespectful, I'm
5 going to have to remove you again, and I'd prefer not to do
6 that, honestly, Mr. Carnes. This is much better if you're
7 here for your sentencing.

8 So, Mr. Carnes, can you commit to me that you will
9 conduct yourself appropriately based on what I've just told
10 you?

11 THE DEFENDANT: Yes, sir. Yes, sir.

12 THE COURT: Okay. Thank you, Mr. Carnes. And, you
13 know, you did say something earlier, and I agree with you, you
14 did conduct yourself I thought respectfully through the trial.
15 And I appreciated that, and I think we talked about that. So
16 thank you for doing that. But today's an important day as
17 well, okay? So at this time I'm going to overrule all
18 objections, and I will adopt the proposed guideline
19 calculations of the United States probation office.

20 So that's -- so we -- I want to say this again, so
21 it's clear, and I may -- I misspoke earlier, and I'll tell you
22 where I misspoke. Total offense level 24, criminal history
23 category IV. Guideline range of 77 to 96 months. Supervised
24 release range of one to three years. A fine range of \$20,000
25 to \$200,000. And I originally said the special assessment is

1 \$100 per count for \$200. That's incorrect. It's \$100 per
2 count, and there's three counts, so it's \$300 instead of \$200.
3 Just so we're clear on that.

4 Now, based on that, I believe that's consistent with
5 the Court's rulings, and that's how we'll proceed at this
6 point in time with those guideline calculations.

7 So at this time the government has indicated there's
8 evidence that you wish to present at this time.

9 MR. ALFORD: Yes, Your Honor. And I put this in my
10 memorandum, I do think that Counts 1 and 2 for sentencing
11 purposes merge, because they involve the same nucleus of
12 operative facts. One is a -- they're just different theories
13 of culpability. One is being a knowing unlawful user of a
14 controlled substance, and the other is being a knowing felon
15 in possession of a firearm. So I think although it's totally
16 appropriate for the government to have had two counts before
17 the jury for purposes of sentencing, because it's the same
18 firearm, the same nucleus of operative facts, it's my belief
19 that they merge for sentencing.

20 THE COURT: Okay. Very good. So that means I need
21 to advise Mr. Carnes that he's looking at the potential, worst
22 case scenario of 20 years in prison instead of 30 years in
23 prison, is that correct?

24 MR. ALFORD: That's correct, Your Honor. And I
25 think that's probably also where you came with the \$200

1 special assessment.

2 THE COURT: Oh, okay. Well, thank you, Mr. Alford.

3 MR. ALFORD: Yes, sir.

4 THE COURT: So that -- that -- that's something I
5 need to talk to you about, Mr. Carnes. So I originally said
6 there's three counts. All of these counts are punishable by
7 not more than 10 years. Mr. Alford believes, and I assume
8 we'll be seeking no more than, up to 20 years in prison is the
9 maximum liability you're exposed to on these cases. And I
10 said \$200 special assessment, and Mr. Alford is telling us
11 that he believes that that's the maximum that you can receive
12 as far as the mandatory special assessment, not \$300. Even
13 though there's three counts. So very good.

14 Do you understand those changes?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Okay. Thank you.

17 Please -- please proceed.

18 MR. ALFORD: Your Honor, I have, with respect to
19 evidence to present here at this sentencing hearing, I have
20 five exhibits. I've provided them to the Court and to
21 Mr. Truesdale ahead of time. I actually have extra copies for
22 the defendant. May I have the marshals --

23 THE COURT: Would you hand those to the marshals,
24 please?

25 MR. ALFORD: So, Your Honor, the United States first

1 offers Government Exhibit 1, which is a email from CoreCivic,
2 which is a --

3 THE DEFENDANT: Objection.

4 THE COURT: Hold on. Hold on. I'm going to give
5 you a chance, Mr. Carnes, I promise you.

6 Go ahead.

7 MR. ALFORD: Which is an incident report related to
8 an alleged assault that the defendant was engaged in on July
9 29th of 2019 at CoreCivic. This is just an email
10 correspondence from the marshal service, specifically Deputy
11 Marshal Michael Jacobson who provided this incident report to
12 Mr. Truesdale and I after it occurred. And so we're just
13 offering that into evidence.

14 THE COURT: And so let me make sure that I
15 understand. Is this exhibit, it's Deputy Marshal Michael
16 Jacobson sent this to Trey Alford and Jonathan Truesdale on
17 Wednesday, July 31st, 2019, is that what you're talking about?

18 MR. ALFORD: Yes, Your Honor.

19 THE COURT: Okay. Mr. Carnes, you have an objection
20 to that, sir?

21 THE DEFENDANT: Yeah. I'd like to object to -- to
22 this paper right here. They never gave me a copy of this
23 paper until just today. And this paper right here I just
24 received this Monday from Case Worker Day. And this is saying
25 this is a male officer, and this is saying this is a female

1 officer.

2 THE COURT: Okay.

3 THE DEFENDANT: It's incorrect. And on that date --
4 that date -- - what date was this? 6 -- excuse me. July 29,
5 2019, I was getting beat up and jumped --

6 THE COURT: Hold on. Hold on. Hold on. No, now is
7 not your time. I want to know what your legal objection is.
8 You think this is inaccurate; is that correct?

9 THE DEFENDANT: Yeah. It's inaccurate. Yes, sir.

10 THE COURT: Okay. Your objection is overruled at
11 this time.

12 What else?

13 (Government Exhibit 1 admitted in evidence.)

14 MR. ALFORD: Your Honor, I also offer Government
15 Exhibit 2, which is restitution documentation, which is
16 actually attached to the PSR that it was provided by Terrence
17 Walls to the probation officer, specifically Kurt Habiger.
18 And it basically is an estimate of damages that were sustained
19 to his vehicle when the defendant shot at it and put holes
20 through it. And we're just offering that information that
21 Terrence Walls provided to the probation office.

22 THE COURT: And so we're clear, this declaration --
23 it's a declaration of victim losses. It was -- there appears
24 to be three pages to that; is that correct?

25 MR. ALFORD: Yes, Your Honor.

1 THE COURT: Okay. And that's Exhibit 2. Do you
2 have an objection to Exhibit 2, Mr. Carnes?

3 THE DEFENDANT: Yeah. I got an objection to Exhibit
4 2.

5 THE COURT: Okay. What's your legal objection to
6 Exhibit 2, sir?

7 THE DEFENDANT: My legal objection is I've never
8 shot this Terrence Walls.

9 THE COURT: Okay.

10 THE DEFENDANT: You know, I never shot this Terrence
11 Walls and Terrence Walls never positively ID'd me out of no
12 line-up. He said he marked five or six -- or six because the
13 shooter had shorter hair. He picked me --

14 THE COURT: Okay. Hold on. Stop. Stop. We're
15 going to stop you. Your objection is based upon it's
16 inaccurate, it's not truthful. Your objection is overruled at
17 this time. Please proceed.

18 (Government Exhibit 2 admitted in evidence.)

19 MR. ALFORD: Yes, Your Honor. Government Exhibit 3
20 is a video that was taken at CoreCivic in Leavenworth, Kansas
21 that identifies the defendant in this altercation. We
22 provided a copy of that to the Court based off the defendant's
23 decision to go pro se and his refusal to confer with his
24 attorney. My guess is he has not seen the video. So my
25 recommendation to the Court is we are able to play it here,

1 and we would offer to have it admitted so that the Court and
2 the defendant can see it.

3 THE COURT: Okay. And I note there is a monitor on
4 the table. That will be played through that monitor so the
5 defendant can see it, correct?

6 MR. ALFORD: That's my belief that we know of.

7 THE COURT: And this is document 3. And document 3,
8 so we're clear, is related to -- or it's the video that's
9 described in the second addendum to the presentence report,
10 correct?

11 MR. ALFORD: That's correct. And it also relates to
12 the incident report that the marshal service sent to
13 Mr. Truesdale and I that's marked as Government Exhibit 1.

14 THE COURT: Very well. Please present Exhibit 3.

15 And look closely, Mr. Carnes, that this video -- the
16 monitor on your table will have the video they're playing.

17 (Government Exhibit 3 played. No sound.)

18 THE DEFENDANT: He helped. They choking me up.
19 He's spraying me with mace. Excessive force. Now is when I
20 would like you to stop talking, Mr. Carnes. I'll give you a
21 chance in a minute.

22 THE COURT: I note this is the end of it. Towards
23 the end they're just taking him out of the cell. Is there
24 anything else probative of this video that we need to see?

25 MR. ALFORD: No, Your Honor.

1 THE COURT: Thank you.

2 Mr. Carnes, did you laugh during the course of this
3 video? Did I hear you laugh?

4 THE DEFENDANT: I've never seen this video. I seen
5 my booty come out, you know. Excuse me. I seen my behind
6 come out, and I kind of smirked. But --

7 THE COURT: Is that why you were laughing?

8 THE DEFENDANT: Yeah. That's why I laughed, I seen
9 my butt -- my butt come down.

10 THE COURT: Okay.

11 THE DEFENDANT: But I was wondering where the other
12 video before that one? Because --

13 THE COURT: Okay. Hold on. Hold on. Hold on.
14 I'll give you a chance. So this is marked as Exhibit 3 --

15 MR. ALFORD: Yes, Your Honor.

16 THE COURT: -- correct? And you're offering this
17 into evidence at this time?

18 MR. ALFORD: I am, Your Honor.

19 THE COURT: And your objection to this -- your legal
20 objection to this is what, Mr. Carnes.

21 THE DEFENDANT: Legal objection is that I got jumped
22 inside the pod, and I was running to get help and I needed her
23 help. And I was trying to get her to help me. And I was
24 telling her to help me. And I was having a mental breakdown
25 from my anxiety attack. I needed help. They was trying to

1 jump me, and I needed her help. I suffered -- I put in
2 grieving -- sick calls. I put her as a witness. She said --
3 she said -- Ms. Bell, she's from Africa. She's over here.
4 She said that -- that -- that -- that Chief Rice was trying to
5 get her to go down to Leavenworth Police Department --

6 THE COURT: Okay. Stop. Stop.

7 THE DEFENDANT: -- and file charges on me.

8 THE COURT: Stop. Clearly, so the record is clear,
9 this is -- Exhibit 3 has no audio to it. It does appear, and
10 Mr. -- Mr. Carnes has confirmed it's his rear end that's
11 showing in this video. That he was grabbing a correction
12 officer by the neck is what it appears to be.

13 Now the question is, Mr. Carnes has taken issue with
14 the misuse of a personal pronoun, he versus she.

15 Mr. Alford, can you help me understand that?

16 MR. ALFORD: It's my understanding, it's a female.
17 But for purposes of this, I don't think it matters, Judge. I
18 don't think it matters whether it's a he or a she. I think it
19 matters that he attacked a correction officer.

20 THE COURT: It appears, by what I've seen, by the
21 video this was a female correction officer.

22 MR. ALFORD: That's my belief, Judge.

23 THE COURT: Yes. And whether or not someone wrote a
24 different -- used a different pronoun doesn't win the day for
25 you today, Mr. Carnes. So at this time I will admit Exhibit

1 3. All right?

2 Please proceed.

3 (Government Exhibit 3 admitted in evidence.)

4 MR. ALFORD: Your Honor, at this time the United
5 States would request that the Court consider some unsworn
6 victim impact statements. I've conferred with the marshal
7 service, and the Court might have totally intended on doing
8 this anyway, but the United States --

9 THE COURT: Hold on. I didn't understand that last
10 part.

11 MR. ALFORD: The Court might have totally intended
12 on doing what I'm about to propose, but I would like to, after
13 conferring with the marshal service, to request that they be
14 allowed to make their victim statement at the witness box.

15 THE COURT: Sure.

16 MR. ALFORD: Just for their protection and the
17 pandemic. It will be easier for them to speak without a mask
18 on.

19 THE COURT: Yes. That would be fine.

20 MR. ALFORD: And so the United States would like to
21 first request Jackie Mercer. And she recently had an injury,
22 so she might need a little help getting up to the witness box.

23 THE COURT: Okay. Yes, sir. We'll allow that.

24 Please put your mask on, Mr. Carnes.

25 Welcome to you, Ms. Mercer. And since you have

1 plexiglass we're going to allow you to remove your mask as you
2 sit there, if you'd like to. If you're comfortable doing that
3 you're welcome to do that.

4 THE WITNESS: Thank you.

5 THE COURT: Ms. Mercer, would you please begin,
6 ma'am, by speaking your full name and spelling your last name
7 for our record.

8 THE WITNESS: My name is Jacquelyn Canon Mercer,
9 M-E-R-C-E-R.

10 THE COURT: Ms. -- I'll offer you a water. We're
11 using bottled water in this pandemic climate. So you're
12 welcome if that would help you, and there's some Styrofoam
13 cups there next to you, Ms. Mercer, and you're welcome to use.
14 And I'm going to allow you to just ask some questions so you
15 can orient this witness on the record to relationships and the
16 purpose that she's here.

17 MR. ALFORD: Yes, Your Honor.

18 Ms. Mercer, is it fair to say that you're the mother
19 of Patrick Mercer?

20 MS. MERCER: I am.

21 MR. ALFORD: And he died as a result of a motor
22 vehicle car wreck with the defendant; is that right?

23 MS. MERCER: That's correct.

24 MR. ALFORD: And prior to testifying today, we
25 conferred and you indicated a desire to make a statement to

1 the Court; is that right?

2 MS. MERCER: Yes.

3 MR. ALFORD: And it's my understanding that you've
4 prepared something to say to the Court?

5 MS. MERCER: I have.

6 MR. ALFORD: And would you like to do that at this
7 time?

8 MS. MERCER: Yes.

9 MR. ALFORD: Okay. Please do so. Thank you.

10 THE COURT: And Ms. Mercer, I always tell people
11 when they're getting ready to read something -- I know this is
12 a difficult day, so take your time -- and please read -- we
13 usually read faster than we talk. So our court reporter is --
14 her job to write everything down and we ask people to slow
15 down when they read a little bit. Okay?

16 MS. MERCER: Okay.

17 THE COURT: Thank you. Please proceed.

18 MS. MERCER: August 30th, 2016, the day that changed
19 our lives forever, Patrick's, his brothers, Kelly and Jack,
20 his father, grandfather, his aunts, uncles, cousins, his many,
21 many friends, his longtime girlfriend, his teammates, his work
22 mates, his precious dog, Chewy, and me. That day changed
23 everything and everyone. A mother's worst nightmare. That
24 phone call that you have prayed your whole life to never
25 receive, but because of just one selfish, disrespectful,

1 irresponsible person whose terrible decision that day took our
2 Patrick --

3 THE DEFENDANT: (Indiscernible.)

4 THE COURT: Hold on. Hold on. Hold on.

5 THE DEFENDANT: You can't do me like that. You
6 can't do me like that. (Indiscernible.)

7 THE COURT: All right. Let's take him out.

8 THE DEFENDANT: They was trying to kill me. I was
9 trying to save my life.

10 THE COURT: Take him out.

11 THE DEFENDANT: I didn't mean to do that. They was
12 trying to kill me I was trying to save my life.

13 THE COURT: Please stop.

14 THE DEFENDANT: I didn't mean to do that to you-all.
15 (Indiscernible) I'm sorry. I'm sorry. (Indiscernible) my
16 kids (indiscernible). I didn't mean to do that to you. I'm
17 sorry. (Indiscernible)

18 THE COURT: Our chief -- our Chief Deputy Marshal
19 Seeling is present. We would like you to make sure he can
20 listen to the audio version of this, please.

21 MARSHAL SEELING: Yes, sir.

22 Turn the audio on back there.

23 THE COURT: I note that we've removed the defendant
24 from the courtroom because of a very loud and disruptive
25 outburst. And once again, he wouldn't stop talking until they

1 got him out of the -- into a holding cell, I guess, adjacent
2 to the courtroom. The Deputy Marshal Seeling has ensured that
3 they will play the audio of what we're doing in here so he can
4 hear it. It's clear he can't -- he can't maintain any level
5 of obedience to the Court's earlier order.

6 So at this time, I apologize, Ms. Mercer, for that
7 outburst. And would you like to proceed, ma'am?

8 MS. MERCER: Again, because of just one selfish,
9 disrespectful, irresponsible person whose terrible decision
10 that day took our Patrick away from his world, our world, and
11 for me an automatic membership into the club of mothers who
12 have lost their children, the club no one wants to belong to,
13 but do.

14 Let me tell you about my Patrick. My life blessed
15 and full, I am the mother of three sons. Patrick is my middle
16 son, the tallest, sweetest, bright, kind, loving, athletic,
17 hard working, motivated, driven, a leader, handsome, educated,
18 and easy -- easy. Patrick fit the mold of the middle child to
19 a tee. When he was maybe four years old or so I sat him down
20 and said, "Patrick, promise me that you will always be my calm
21 between my two storms." Patrick replied, "I promise, Mommy."

22 Looking back I realized my life is represented in
23 two parts, the before, and the now. Because the before August
24 30th, 2016, life was so fun, exciting, busy, a wonderful
25 chaos, really. The now I just attempt to live life with a

1 broken heart. I felt weak, the guilt that I felt for being
2 alive when Patrick was not was dreadful. My heart hurt so bad
3 it was -- it was broken. A piece just gone, and I knew that
4 it was gone forever. It's interesting, I can look through
5 photos and comparing the before to the now I see it. It's in
6 my smile, and it's in my eyes, even in my posture. The
7 flicker of life has dimmed.

8 Even happy times are difficult. I want to be happy
9 and I am happy, and then there is that missing part of my
10 heart, and just like that happy flows right out of my body.

11 There is always an empty chair at every family
12 dinner, every holiday that missing Patrick smile and laugh.
13 Every celebration or party I find myself looking around but
14 there is no Patrick.

15 I live in fear and anxiety when I drive, when my
16 other two sons drive, sleeping is impossible. I close my eyes
17 and the film of August 30th, 2016, plays on and on. Awake or
18 asleep, I live a mother's nightmare. Grieving Patrick is like
19 riding a wave. I never know when or where. It could be a
20 song, or it could be a movie. It could be a particular
21 street, a particular hospital, a siren, an ambulance, or every
22 Tuesday evening, and I'm mad.

23 I prided myself as a very loving, fun mother. My
24 boys are my life, and there's nothing that I would not do for
25 them; however, I held my boys very accountable for all of

1 their actions. The bar was high in our home. I demanded
2 their perfection, not to be perfect, but to find their own
3 individual perfect. In other words, be the best that you can
4 be each and every day, because I believe my three sons were
5 100 percent a direct reflection of me, their mother.

6 Say please, thank you, I'm sorry. Respect your
7 elders, be a good friend, student, team player, love God, and
8 always listen for my voice. It's my mantra.

9 The loss of Patrick at just 24 years old is beyond
10 any other sadness or pain I have ever felt in my life. It's
11 just not supposed to happen this way. I had to bury my
12 beautiful son Patrick, and now all the future wonders of
13 Patrick have come to an end.

14 I have watched the impact of Patrick's death on his
15 brothers and father, each struggle in their own ways, missing
16 every moment of time that was taken from them and from
17 Patrick. One senseless, selfish, irresponsible act, Patrick
18 did not deserve what happened to him on August 30th, 2016.
19 Patrick deserved to live.

20 I thank God Patrick knew how much I loved him, and I
21 thank God that this mama knew how much he loved her. I will
22 live each day of my life honoring the life that Patrick
23 cannot.

24 THE COURT: Ms. Mercer, thank you for your
25 courageous testimony. You may be seated. Thank you. And I

1 apologize for the outburst that interrupted your testimony.

2 MR. ALFORD: Thank you, Judge. And again, Jackie
3 Mercer's son is just going to help her, if that's okay with
4 the Court.

5 THE COURT: While we're doing that, we are -- I am
6 -- I am revoking the defendant's right to appear -- to proceed
7 pro se. He clearly can't condone himself -- or conform his
8 behavior to what's necessary to be in court. After the next
9 victim witness testifies, we will attempt to bring him in
10 again. We'll give it another shot. But he will not be
11 representing himself. I will be looking to you,
12 Mr. Truesdale. And I apologize to put you in this position,
13 but I think that's what the law requires at this time, sir.

14 Please have a seat. And do you need a water?

15 MR. MERCER: Please.

16 THE COURT: Yeah.

17 MR. MERCER: Thank you.

18 THE COURT: And we'll let Ms. Mercer have a seat. I
19 note she's on crutches today. So we're going to give her a
20 little time to get comfortable. Sir, would you please begin
21 by speaking your full name and spelling your last name for our
22 record?

23 MR. MERCER: Michael Kelly Mercer, M-E-R-C-E-R.

24 THE COURT: Mr. Mercer -- I'm sorry. Mr. Alford,
25 please proceed.

1 MR. ALFORD: Yes.

2 Mr. Mercer, you are the brother of Patrick Mercer;
3 is that right?

4 MR. MERCER: I am, yes.

5 MR. ALFORD: And he passed away in the car wreck
6 that was caused by the defendant on August 30th, 2016; is that
7 right?

8 MR. MERCER: Yes.

9 MR. ALFORD: And prior to testifying today is it
10 fair to say that you and I conferred and you indicated that
11 you have an interest in making a statement to the Court?

12 MR. MERCER: Yes.

13 MR. ALFORD: And is it fair to say you've prepared
14 one?

15 MR. MERCER: Yes.

16 MR. ALFORD: And if you wouldn't mind, go ahead, and
17 I think the Court will ask you just read slowly so that we can
18 make sure that the court reporter gets everything. And you're
19 free to make your statement.

20 THE COURT: Thank you, Mr. Alford.

21 Mr. Mercer, please proceed, sir.

22 MR. MERCER: My name is Kelly Mercer. And I am here
23 today on behalf of my family with a monumental if not
24 impossible task to express in words how the loss of my little
25 brother, Patrick, has impacted me and my family. Now I know

1 from the outset that I will fail at this task because there is
2 no combination of words in any conceivable order that will
3 ever fully articulate the love so many had for Patrick, the
4 limited potential of the life laid before him, or the visceral
5 thing of hurt that we feel every day he isn't with us.

6 I say impossible task, because unless you've held
7 your little brother in your arms as he takes his last breaths
8 on the side of a road, you wouldn't understand the impact.
9 The memory and pain that come along with that night will be
10 with me until my last days. They live as a part of me now,
11 and their vividness, unfortunately, doesn't dissipate with
12 time.

13 I say impossible because unless you've watched your
14 own mother and father cry over your brother's body at a
15 funeral home and kiss his cold forehead and hold his cold
16 hands you'd know that words don't adequately express that kind
17 of anguish and helplessness. I say impossible, because some
18 of the pain isn't even known yet. Just anticipated.

19 My sorrow and pain become anger when I think about
20 what should have been for Patrick. He had just graduated from
21 Pittsburgh State and had become a -- begun a promising career
22 in construction management. Of my mother's three boys, he was
23 definitely the most responsible and mature beyond his years.
24 More importantly, though, he was kind, and he was loving,
25 Patrick was the type of man that ensured everyone else's needs

1 were taken care of before he even looked to his own. He
2 sacrificed for our family during tough times, and inspired me
3 to be better just by doing what came most naturally to him, by
4 being at his core a good and compassionate person.

5 He would have made an incredible husband and an even
6 better father. My youngest brother, Jack, said it best when
7 he said that what will hurt the most is when Patrick and his
8 wife and children aren't there for our family's holidays, our
9 Sunday dinners, the football games, the baseball tournaments
10 and so on.

11 Thinking about him not being there standing up with
12 me as with one of my best men at my wedding in January were
13 down the road not being -- or down the road not being one of
14 my future children's two favorite uncles, that impact isn't
15 quantifiable yet. But nevertheless, it is still real, and it
16 is still difficult to fathom.

17 I can say impossible because unless you were there
18 to see the more than 1,000 people who came to grieve with me
19 and my family and to celebrate Patrick's life at his memorial,
20 then you can't grasp the extent of losing him. Not only on me
21 and my family, but on the countless lives Patrick had touched
22 in one way or another.

23 I don't know how to end this statement because the
24 hard truth is I never thought this was reality I would need to
25 confront. I shouldn't be up here talking about who my little

1 brother was. I don't want to be up here talking about who he
2 was. Patrick should be here. My mom shouldn't have cried
3 herself to sleep for months over losing her son. My family
4 should not have gone through this, and I wouldn't wish the
5 pain my family and I have endured and still feel on anyone.
6 But we are here today, and we have tried desperately to let go
7 of our anger. We have focused on each other and on Patrick,
8 and we carry him with us every day in our hearts.

9 THE COURT: Thank you, Mr. Mercer, for your
10 testimony.

11 MR. MERCER: Thank you.

12 THE COURT: You may be seated, sir.

13 All right. Are there any other victim statements?

14 MR. ALFORD: No victim statements, Your Honor. But
15 as far as evidence, the government has marked as exhibits
16 Government's Exhibit 4 and 5.

17 THE COURT: The reason I'm asking is, I'm going --
18 out of respect for his family, I didn't want to bring
19 Mr. Carnes back in if someone else from his family is going to
20 testify. But if we're done with that part, I will bring --

21 MR. ALFORD: We are, Judge.

22 THE COURT: Let's try this again. Mr. Truesdale,
23 let's put that microphone in front of Mr. Carnes. And can
24 could we ask you to use this microphone here at the podium if
25 necessary?

1 MR. TRUESDALE: Yes, sir.

2 THE COURT: And if you -- if you're just going to
3 answer maybe one word responses to anything, you can just
4 stand and speak, and as long as our court reporter can hear.

5 MR. TRUESDALE: Sure. Yes, sir.

6 THE COURT: Get those down. Thank you.

7 Mr. Truesdale, there's a microphone behind you too,
8 sir. You could pull that if that -- whatever you choose, a
9 better way, that's up to you.

10 (Defendant present.)

11 THE COURT: Mr. Carnes, at this time I have revoked
12 your right to proceed pro se, and I have appointed standby
13 counsel to represent you. I will give you this last warning,
14 if you -- if we hear another outburst from you or you can't
15 follow the rules, the next time we take you into the holding
16 cell will be the last time for the purposes of this sentencing
17 hearing. So can you commit to me that you will conform your
18 behavior to what's expected of you here in this courtroom and
19 follow our rules, sir?

20 THE DEFENDANT: Yes, sir, Judge Kays. And I'd like
21 to say, man, like --

22 THE COURT: No, no, no, no.

23 THE DEFENDANT: I want to be -- I want to be -- I
24 want this to be fair, you know what I'm saying?

25 THE COURT: I want you to stop talking. I just

1 wanted -- that was a yes or no question.

2 THE DEFENDANT: Yes, sir.

3 THE COURT: You're going to be able to conduct
4 yourself appropriately. I hope so. The next time the
5 marshals take you out will be the last time they take you out
6 today. Just be warned about that. I will be looking to
7 Mr. Truesdale for his legal expertise in this case from this
8 point forward.

9 Please proceed, Mr. Alford.

10 MR. ALFORD: With respect to evidence, Judge, the
11 government has marked Government Exhibits 4 and 5, which are
12 written statements, impact statements from Kelly Mercer and
13 Jackie Mercer. They're substantially consistent with what
14 they just told the Court, but just for purposes of the record
15 I'd like to offer them to be admitted.

16 THE COURT: Mr. Truesdale?

17 MR. TRUESDALE: No objection, Your Honor.

18 THE COURT: Thank you. Exhibits 4 and 5 are
19 admitted.

20 (Government Exhibits 4-5 admitted in evidence.)

21 MR. ALFORD: No additional evidence, Judge.

22 THE COURT: Okay. Mr. Truesdale, does the defendant
23 have evidence that he wishes to present at this time?

24 THE DEFENDANT: So what is like the strategy next?

25 THE COURT: Let's go off the record briefly, so...

1 (Discussion off the record.)

8 But I'll remind you, Mr. Carnes, that
9 Mr. Truesdale's job is not to voice everything you come up
10 with as far as an objection. His voice as an officer of this
11 Court is only -- his job is as an officer of the court only to
12 advance legal theories which have merit, and he is first bound
13 as an officer of the Court to follow those rules. So he may
14 not be able to entertain all of your ideas about how you
15 believe a sentencing hearing should be conducted.

16 Mr. Truesdale, is there any evidence the -- that's
17 appropriate that the defendant wishes to present at this time?

18 MR. TRUESDALE: Your Honor, in my professional
19 opinion nothing has been presented to me that would be
20 appropriate to address to the Court.

1 MR. ALFORD: Yes, Your Honor. The United States is
2 recommending the statutory maximum sentence based off of what
3 I believe the stat max is in this case, Judge. As I mentioned
4 it previously in this hearing, I believe Counts 1 and 2 merge
5 for sentencing. If they didn't I'd be asking for more time.
6 But they -- they do, I believe, and as an officer of the court
7 I have a duty to tell the Court that.

8 So the United States is recommending that the Court
9 adjudge 120 months of imprisonment on Counts 1 and 2, three
10 years of supervised release, \$100 mandatory special
11 assessment, restitution to the victim, Terrence Walls, in the
12 total of \$3,833.78, which I'll have some more to say about
13 that in a moment, Judge. And with respect to the Count 3 the
14 United States is recommending 120 months of imprisonment to
15 run consecutive to Counts 1 and 2, and three years supervised
16 release, and a \$100 mandatory special assessment, for a total
17 of 240 months imprisonment, three years supervised release,
18 and \$200 mandatory special assessment.

19 With respect to restitution, Judge, the figure of
20 \$3,833.78 is based off of the declaration that Terrence Walls
21 provided, which is marked as Government Exhibit 2. The PSR
22 had an amount recommended of \$3,315.78. The discrepancy in
23 the two figures is based off of Terrence Walls' assertion that
24 he had window repair in the amount of \$518.10. He has not
25 been able to provide any documentation of that. Having said

1 that, based on common sense, I don't think that that's an
2 outrageous claim.

3 And the United States presented evidence at trial,
4 that the Court might recall, not only testimonial evidence
5 from Terrence Walls, but also Government Exhibit 29, which
6 showed a photograph of Terrence Walls' vehicle -- actually a
7 couple photographs, which clearly depicted that his windshield
8 was destroyed with bullet holes in addition to the bullet
9 holds in his vehicle. So based off of Terrence Walls'
10 estimate and common sense and the other evidence presented at
11 trial, the United States believes his assertion of \$3,833.78
12 is appropriate, and it meets the preponderance of the evidence
13 standard. In the event the Court doesn't feel like it does,
14 then the United States would ask for the fallback position
15 that doesn't give credit for the window.

16 The Court also has to make a finding on the
17 restitution issue, to order it, that in addition to the
18 defendant causing that damage, that also he has the ability to
19 pay. So with respect to that issue, the United States would
20 point that -- out to a couple things. One, the defendant is
21 very young, and the monetary penalties unit can seek this
22 money for a couple decades. Moreover, it's my understanding
23 that the Bureau of Prisons has work programs where the
24 defendant can work and get up to \$25 a month, and if he
25 doesn't do it he'll lose privileges. Well, even though it

1 will be difficult to get that money in restitution, that's
2 something that the monetary penalties unit can seek, and
3 frankly it's probably a good restitution -- I mean, a good
4 rehabilitation for this defendant, start paying back the
5 victim. So we would like the Court to make that finding that
6 he is able -- able to pay restitution, and that that
7 amount is appropriate.

8 With respect to the sentencing factors that justify
9 the maximum sentence in this case, first I'd like to just
10 point to the -- in this case I think the most important
11 3553(a) factor, which is the nature of the offense.

12 Jackie and Kelly Mercer probably -- not probably,
13 definitely can tell the Court and they did tell the Court how
14 this defendant's reckless actions has caused a tremendous
15 heartbreak for them, and they did a better job than I could
16 ever hope to do. But I have to mention it because it's so
17 impactful, and that in itself, Judge, I think could warrant a
18 20-year sentence. But I think that the devil's advocate might
19 say, well, okay, the defendant was on PCP, cocaine and
20 marijuana, and he was in a gunfight, but that's just reckless.
21 He didn't maybe intend to kill Patrick Mercer. And that might
22 have some merit to it. But then we look at the facts of this
23 case, and we look at, well, he sure intended to shoot at
24 Terrence Walls. He shot right at him. And he shot his car
25 up, and that was with the intent to hurt Terrence Walls. And

1 that's the same firearm that he had found on him on August
2 30th of 2016, he used to shoot at Terrence Walls. That shows
3 you his intent.

4 Moreover, if you look at this particular defendant
5 while he's been in custody, it's pretty common for defendants
6 that when they have something heavy like this hanging over
7 their head that they actually mind their Ps and Qs, and they
8 engage in things to show that they have the --

9 THE COURT: Hold on, Mr. Carnes. Stop it. Sit
10 still and listen.

11 THE DEFENDANT: I'm listening.

12 THE COURT: And don't get up again. If you get up
13 again the marshals are directed to take you out of the
14 courtroom.

15 Please proceed, Mr. Alford.

16 MR. ALFORD: This particular defendant rather than
17 engaging in some of the rehabilitative programs that are
18 available to him, what does he do? He assaults a correction
19 officer, and it's pretty clear he attacked her. He's a
20 predator, Judge. He attacked her, he went after her throat.
21 It was so egregious that another detainee intervened on her
22 behalf.

23 We also -- I would like to refer the Court to his
24 testimony at trial, because that's also relevant for the
25 nature of the conduct. The United States could have asked for

1 an obstruction of justice enhancement under the guidelines.
2 And basically the main reason why I didn't was because, he did
3 admit to most of the elements of the offense. So parts of his
4 testimony were truthful. But he lied when he said he wrestled
5 the firearm in question from his assailant. How do we know
6 that? Because he used it against Terrence Walls. And that
7 factor of his perjured testimony is certainly something the
8 Court can consider when whether or not an upward variance is
9 appropriate.

10 I would also like to point out that in Count 3 the
11 incident where he was using marijuana and had a firearm,
12 that's pretty dangerous too. He was driving around high on
13 marijuana with a firearm. He's a -- he's a total danger to
14 the community, which the facts of this case demonstrate. But
15 it's not just the facts of this case, it's the criminal
16 history of this defendant. He's in criminal history category
17 IV, which certainly isn't the worst but it's certainly not
18 good considering his young age. He's also got a prior
19 aggravated assault with a firearm, which is identified in PSR
20 paragraph 32, where he shot two victims. And I'd like to note
21 that the circumstances of that case were pretty similar to his
22 shooting incident against Terrence Walls, which shows that his
23 punishment that he got back for that case did nothing to deter
24 him from the same type of criminal behavior that he's here
25 before this Court.

1 With respect to the defendant's mental history. The
2 defendant made some statement earlier in these hearings about
3 how, well, this correction officer, it's his fault he had to
4 strangle her because she wasn't responsive to his needs for a
5 mental evaluation. I'd like to just point out this Court had
6 a mental evaluation of this defendant, and that mental
7 evaluator opined that he was a malingeringer, which that too is a
8 factor I think that the Court should consider in determining
9 the total history in considering the 3553(a) factors.

10 I think that the Court can also consider the
11 defendant's actions throughout these proceedings. I think
12 they're indicative of his lack of rehabilitative potential.
13 There's little hope that this defendant has rehabilitative
14 potential. He showed that -- he's shown time and time again
15 he's a predator. He's shown time and time again he's a danger
16 to the community. And sadly, the only thing we can do is try
17 to separate him from the community as long as possible.

18 Finally, just the other 3553(a) factors that I won't
19 belabor, but certainly this type of sentence the maximum
20 sentence will provide specific deterrence that his prior
21 punishments have not provided. It will provide general
22 deterrence, and hopefully it will provide promotion for
23 respect for the law. And for all those reasons that's why
24 we're making the recommendation, Judge.

25 THE COURT: Thank you, Mr. Alford.

1 Mr. Truesdale, could we ask you to come to the
2 podium? I think --

3 MR. TRUESDALE: Yes, Your Honor.

4 THE COURT: I think it's hard for you to do your job
5 given the defendant's behavior.

6 MR. TRUESDALE: One moment, sir.

7 (Defendant conferred with counsel off the record.)

8 THE COURT: No. I hear you say, "Can I speak?"
9 You'll be -- you'll get a chance to speak at the very end
10 before I pronounce sentence.

11 THE DEFENDANT: Okay.

12 THE COURT: Right now you are not to speak, you are
13 to be quiet. I'm going to let Mr. Truesdale make a
14 recommendation to the Court.

15 THE DEFENDANT: Can he talk to me and explain to me?

16 THE COURT: No, no. We are having a hearing.

17 THE DEFENDANT: I don't know what he's going up
18 there to say.

19 THE COURT: Stop talking. Thank you, Mr. Carnes.

20 Thank you, Mr. Truesdale.

21 MR. TRUESDALE: May it please the Court?

22 THE COURT: Yes, sir.

23 MR. TRUESDALE: Your Honor, I'd like to make a
24 record for myself.

25 THE COURT: Yes, sir.

1 MR. TRUESDALE: On June 2nd was the last attempt I
2 made after multiple --

3 THE COURT: Could you get closer to that microphone?

4 MR. TRUESDALE: I beg your pardon. On June 2nd --

5 THE COURT: Is that microphone on? Okay. Okay. It
6 is. I'm sorry.

7 MR. TRUESDALE: I'm sorry.

8 THE COURT: It's tough.

9 MR. TRUESDALE: I'll do better to project. On June
10 2nd was the last attempt I made at communicating directly with
11 my client, Mr. Keith Carnes. I received an email directed to
12 me that he did not want to respond or see me or be involved
13 with me. That was after multiple efforts where I was
14 attempting to contact him to discuss his presentencing
15 investigation report.

16 Now with respect to today's proceedings, Your Honor,
17 I believe that we would ask the Court, reasonably, with
18 respect to the restitution owed to Mr. Walls, I understand the
19 standard, preponderance of the evidence, but at this point I
20 don't believe the government has provided the Court with any
21 documentation with respect to those expenses. We would ask
22 the Court to take that into consideration with respect to
23 Mr. Carnes' objection.

24 And with respect to his sentencing, Your Honor,
25 there is a presentencing investigation report, with a

1 guideline range of 77 to 96 months, and we would ask the Court
2 to -- to consider that range of punishment rather than the
3 upward variance. Thank you, Your Honor.

4 THE COURT: All right. Thank you.

5 Okay. Mr. Carnes, now is your time to speak if you
6 wish to speak. You don't have to speak, but we're going to
7 let you sit right where you're at and the marshals are helping
8 us with a microphone.

9 THE DEFENDANT: Okay.

10 THE COURT: And now is -- you know, I just ask that
11 you be respectful. And what is it you'd like to say,
12 Mr. Carnes?

13 THE DEFENDANT: Okay. On the second day of trial,
14 you -- you -- Mr. Trues -- Terrence Walls got on the stand
15 first, and he said he marked 5 or 6, more 6, and he said the
16 shooter had all black handgun. And he said that the detective
17 say, how sure are you that this is the person who shot you?
18 It's in the statements, in the line-up as evidence, if we
19 could present it that how sure is this number 6 is the person
20 that shot you? In Terrence Walls' statements Terrence Walls
21 says, I'm not sure. As in, I'm not sure this is Keith Carnes
22 that shot Terrence Walls. You know what I'm saying? And in
23 line-up number 3, my brother, Keith L. Carnes, another Keith
24 L. Carnes is in the line-up number 3. You know what I'm
25 saying?

1 And after Terrence Walls got off the stand the
2 government called Detective David Kissee get on the stand.
3 Detective David Kissee said the government asked him what the
4 proffer said. He asked him a question, who is the one who
5 marked 5 or 6? The detective said he was the one who marked 5
6 or 6. I heard it. "Mr. Truesdale, you hear that?" "Yes."
7 Yeah. We heard it. You know, what I'm saying?

8 So when Mr. Truesdale goes next, Mr. Truesdale goes
9 up there and asks and tells David Kissee to repeat what he
10 just said, to inform him that he just said that are you the
11 one that said you marked 5 or 6, and he said, yes, I'm the one
12 who marked 5 or 6. And you stopped Mr. Truesdale.

13 THE COURT: Stop. Stop.

14 THE DEFENDANT: You stopped Mr. Truesdale and he
15 said, yeah, he was wrong. You was incorrect and you was in
16 misconduct for your actions.

17 THE COURT: Stop. Stop. Here's the deal. You're
18 telling me about your appeal, which --

19 THE DEFENDANT: This ain't no appeal.

20 THE COURT: Hold on. Hold on. I'm getting ready to
21 pronounce a sentence upon you. Would you like to say anything
22 related to that?

23 THE DEFENDANT: I'd like -- I would like to have
24 suppress that statement, suppress that statement.

25 THE COURT: Okay.

1 THE DEFENDANT: He was supposed to cross-examine --
2 he was supposed to cross-examine the witnesses again. As a
3 lawyer, and you know this as you've been doing this for a long
4 time, Kays, you know he was supposed to cross-examine the
5 witnesses. They was lying on the stand. You made an error.
6 You said that Terrence Walls said Detective -- the detective
7 is the one who said 5 or 6. Terrence Walls lied on the stand,
8 and detective, he lied on the stand. He was obstruction of
9 justice for him to be marking anything on the line-up paper.
10 That's the witness' job to do in an investigation room. You
11 know this, Judge Kays.

12 And it's perjury for him to tell the witness that
13 I'm the person that got caught with this gun. It's perjury.
14 You know that. And I was trying to get him to ask for that
15 motion. He -- he -- he said, no, he don't want to
16 cross-examine and didn't want to suppress that statement.
17 Because if you would have suppressed that statement I was
18 going to ask at the time to -- you know what I'm saying?
19 Present all this back up, and catch him in their lies, and we
20 was going to ask at the time to dismiss all the counts from
21 this indictment due to prob -- lack of probable cause.

22 THE COURT: Slow down. We're trying to --

23 THE DEFENDANT: Under Fifth Amendment. Under due --
24 know what I'm saying? Like, there was no probable cause, no
25 probable cause.

1 Hey, I got shot. I got shot up, and I was rushing
2 to the hospital, and I passed out behind the wheel, Your
3 Honor. I was -- I didn't know what happened that day.

4 Like, I was in a black dream, like the only thing I
5 was thinking about was my kids and picturing me in the casket,
6 and they crying and seeing me in the casket. That's all I was
7 thinking about, trying to rush to this hospital. Like my
8 mind, I was blanking out. I never been shot. I never been in
9 this situation. Like, drugs is like it was not the answer.
10 Like this happened on 53rd and Park. I grew up in this
11 neighborhood. I'm from this neighborhood. You know, like --
12 Like -- like I got shot up and I was trying to rush to the
13 hospital, you know what I'm saying? Like I -- I passed out
14 behind the wheel and I accidentally killed and hit them
15 people, you know what I'm saying? Like my heart goes out to
16 them, and I'm sorry for what I caused you-all. Like, I'm
17 sorry. You know what I'm saying? Like I was shot up 11
18 times. Did you-all see the video? Did you-all see me? Did
19 you-all see the video? Like you-all were looking at me, like,
20 because I'm black and I'm from the neighborhood, and I'm from
21 the streets. I know that. I'm from the streets and
22 neighborhood. I grew up in the --

23 THE COURT: Hold on. You got to turn around and
24 talk --

25 THE DEFENDANT: Oh, yeah. I grew up in the black

1 community. I walked in the field, you know what I'm saying?
2 Because I'm sorry for what I caused to you-all lost. You know
3 what I'm saying, for what I did to you-all. I was shot up
4 real bad.

5 THE COURT: You got to turn around.

6 THE DEFENDANT: I had three suspects trying to kill
7 me, you know what I'm saying? Like --

8 THE COURT: You got to turn around to the
9 microphone.

10 THE DEFENDANT: Yeah. I had three suspects. I want
11 to look in their eyes.

12 THE COURT: No, no.

13 THE DEFENDANT: I want to be truthful. I want to be
14 with them like because I had suspects like trying to kill me.

15 THE COURT: Stop, stop.

16 THE DEFENDANT: And like my mama they ain't never
17 seen me.

18 THE COURT: Stop. You got to talk in the microphone
19 because we have to write everything you say down.

20 THE DEFENDANT: Okay. And Judge Kays, you know,
21 like Mr. Truesdale asked you, so he was in misconduct, because
22 he did not cross-examine the witness, and he did not come back
23 here after the second day of that trial. I told him to come
24 back and talk to me. He quit talking to me. He quit -- he
25 quit just working with me. He quit -- he turned on me, you

1 know what I'm saying? He told me, he's writing on paper,
2 you're going to get 30 years. He told me, you're going to get
3 guilty. The night before, you're going to get guilty. The
4 juror on the stand -- you let a juror chew tobacco on the
5 stand and didn't take him to jail. This is bias.

6 I mean, what's going on in here? This is all
7 staged. You know what I'm saying? This dude -- this dude
8 gots a personal vendetta towards me. He bust my mom in the
9 ear with an object. (Indiscernible). She had
10 (indiscernible).

11 THE COURT: Stop it. Stop it.

12 THE DEFENDANT: This man -- this man harasses us
13 every day in the hood. Every day. He harasses and beat
14 people up and pull firearms in my face. He --

15 THE COURT: You got to stop talking. I'm going to
16 let you have one minute. Anything else -- any last words
17 you'd like to say before I pronounce sentence?

18 THE DEFENDANT: I just like -- I'd just like to --
19 Your Honor, you was supposed to dismiss this case on the
20 second day of trial. You was supposed to suppress that
21 statement. You did not suppress that statement. Without --
22 with those false accusations I would have never been charged.
23 They're saying that I shot Terrence Walls with this weapon to
24 get me charged illegally, you know what I'm saying? They
25 would put it in my indictment until May 2019. And he showed

1 me this. And he showed me the video. Let's watch the video.
2 It's in the evidence. Let's watch the video. Can we watch
3 the video? It's in evidence. Let's watch the video so you
4 can see this. I want you to see this, the dirtiness that the
5 detective have his -- his friend lie for him.

6 THE COURT: Okay. You're done. You're done. Stop.

7 THE DEFENDANT: Okay. Just one more thing and it's
8 over. One more thing and it's over, please.

9 THE COURT: Okay.

10 THE DEFENDANT: He got suspended from the force.
11 They never disclosed this for racial extended.

12 THE COURT: Stop.

13 THE DEFENDANT: Is this the same detective that say
14 eeny, meeny, miny, moe, catch a nigger by their toe? Is this
15 the same one that's lied for them on the stand?

16 THE COURT: We're done.

17 THE DEFENDANT: I want to know this.

18 THE COURT: We're done. Stop talking. Do you want
19 to be in here for the rest of this?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Okay. Stop talking. It's my turn to
22 talk.

23 This is a very sad case. I can't imagine -- I can't
24 begin to imagine what this poor family, the Mercer family has
25 been through. And they have shown remarkable courage, and

1 made some very powerful statements here today. There's words
2 that were used by Ms. Mercer that I wrote down that I thought
3 were just -- they were kind, and they were appropriate.
4 Senseless, selfless -- selfish, and irresponsible. That is
5 what this case is really about. Senseless, selfish, and
6 irresponsible. Someone, who for whatever reason, puts the
7 safety and well-being of everybody in this community to the
8 side and doesn't consider what actions -- what their actions
9 will potentially cause.

10 Mr. Alford used a word. Predator. That's really
11 the only way to describe this conduct that we've seen here.
12 We have a -- in document -- in the presentence investigation
13 report I looked at paragraph 31, where your prior convictions
14 of assault second degree, two of them, it's the -- it's the
15 Terrence Wall part of this case. It's exactly the Terrence
16 Wall part of this case.

17 You go up to people and you shoot them in their car.
18 Except for Terrence Wall wasn't injured physically, but these
19 other people were shot numerous times. It all makes sense,
20 Mr. Carnes, if you listen to the evidence. And I found the
21 evidence in this case to be overwhelming. And I'll tell you
22 another thing.

23 THE DEFENDANT: Huh-uh.

24 THE COURT: Jonathan Truesdale is one of the finest
25 lawyers we work with in this court system.

1 THE DEFENDANT: Huh-uh.

2 THE COURT: He's the third or fourth attorney you've
3 had because you have a way of going through lawyers. Part of
4 that is gamesmanship, I understand. Your attempt to create
5 error -- no, you can't talk right now. Your attempt to create
6 error in this case, to create some problem with your Sixth
7 Amendment right to counsel. It didn't work, Mr. Carnes. You
8 failed and you're misguided. Mr. Truesdale acted so honorably
9 in this case, and I was very proud that he works for our
10 Criminal Justice Act -- Criminal Justice Act counsel. So
11 there's nothing he did other than try to represent you.

12 So we look at factors under 18 U.S.C. 3553(a).

13 These factors are given to us by Congress, and they should
14 inform decisions that we make in this case. The guidelines
15 are one of the many things we look at.

16 It's clear to everybody in this court, and everybody
17 who sat on that jury, there is one factor that screams loudly,
18 the need to protect the public.

19 The need to protect good people like the Mercer
20 family from this tragic loss that they sustained. The need to
21 protect everyone else who's trying to drive -- drive around
22 this metropolitan area in their job, in their work, in their
23 -- in what they do. So top of that list is need to protect
24 the public. That's what's going to drive this sentence in
25 your case.

1 The nature and circumstances of this offense. It's
2 bad. And get -- don't get me wrong here. I am looking at the
3 creator of all these circumstances. Everybody in this
4 courtroom is here because of decisions that Mr. Carnes made.
5 You brought us all here today. You brought the jury here.
6 You brought the marshals here. Everybody is here because of
7 your decisions, which are very sad.

8 But they're not inconsistent with your criminal
9 history that we've seen in here. So the criminal justice, you
10 talk about many of its failings. Maybe one of the failings is
11 not locking you up for a longer period of time earlier. That
12 may be one of the failings of the criminal justice system that
13 I see.

14 We look at the need for deterrence, hopefully to
15 deter you, to give you some time to think about this,
16 Mr. Carnes, and give other people the understanding that there
17 are severe consequences related to this behavior.

18 Those two are the main ones. I've considered all
19 the factors in this case, or those four are the main ones, the
20 need for deterrence, the need to protect the public, the
21 nature and circumstances of this offense, and your unique
22 history. It's a sad day. No one wants to be here today,
23 Mr. Carnes. You brought us here.

24 I have considered, as I said, all the factors under
25 18 U.S.C. 3553(a). I agree with Mr. Alford, this -- the

1 maximum sentence allowed by law is not enough. But it's the
2 only legal sentence that we can give you. Because this
3 conduct, this case, calls for a much longer sentence. And I
4 hope that you get yourself together while you're serving this
5 sentence, Mr. Carnes, because you are -- you'll end up dying
6 in prison one day, no doubt at the rate you're going.

7 THE DEFENDANT: I hope -- I hope -- I hope you quit
8 being racist and you -- and you allow black -- and you allow
9 us blacks, as you know what I'm saying, quit being biassed and
10 racist, and you slander blacks in courts, you know what I'm
11 saying? During your trials.

12 THE COURT: So now, Mr. Carnes, it is the judgment
13 and sentence of this Court, sir, pursuant to the Sentencing
14 Reform Act of 1984, that this defendant, Keith L. Carnes, is
15 hereby committed to the custody of the Bureau of Prisons for
16 120 months on Counts 1 and 2. These are merged for sentencing
17 purposes. And 120 months on Count 3, to be served
18 consecutively, for a total of 240 months. The maximum allowed
19 by law.

20 Upon release from imprisonment the defendant shall
21 be placed on supervised release for three years, on each
22 Counts 1, 2 and 3. These terms shall run concurrently.
23 That's the maximum allowed by law.

24 While on supervised release the defendant shall
25 comply with the mandatory and standard conditions which have

1 been adopted by this Court. In addition, he shall also comply
2 with the special conditions listed in part D of the
3 presentence investigation report.

4 I am going to waive a fine in this case, because I
5 do expect restitution of \$3,833.78 to be paid by you, and I do
6 believe you will have the ability to pay this through your
7 work in prison and when you get out of prison, hopefully.

8 Those terms of payment will be consistent with part
9 D of the presentence investigation report. You have 14 days
10 to appeal this decision, sir. I must tell you about that.

11 What else do we have to take up in this matter,
12 Mr. Alford?

13 MR. ALFORD: Nothing, Your Honor.

14 THE COURT: Mr. Truesdale, anything else on behalf
15 of Mr. Carnes, sir?

16 MR. TRUESDALE: If I may, Your Honor?

17 THE COURT: Yes, sir.

18 MR. TRUESDALE: Your Honor, throughout communication
19 with Mr. Carnes it's always been very clear to me that there
20 will be an appeals process.

21 THE COURT: Yes, sir.

22 MR. TRUESDALE: Your Honor, I understand how
23 typically that goes with respect to the Eighth Circuit. But
24 for the sake of how this relationship has deteriorated so
25 greatly, I would beg off with respect to being appointed in

1 this matter. I would just like to make that record, Your
2 Honor.

3 THE COURT: I'm going to take that under advisement
4 at this time. I worry about the transition in his appeal from
5 appellate coun -- from you to appellate counsel. But I
6 understand your position, that Mr. -- I understand Mr. Carnes
7 has made it clear he doesn't want to work with you or any
8 other attorney that we've ever appointed in this case.

9 MR. TRUESDALE: Yes, sir.

10 THE COURT: So thank you.

11 MR. TRUESDALE: Thank you, Your Honor.

12 THE COURT: To the extent you've -- well, let me
13 tell you, Mr. Carnes, so we're clear, you have 14 days from
14 the entry of judgment in your case to file the notice of
15 appeal. If you do not file a notice of appeal within 14 days
16 of that date of judgment, sir, you will forever lose your
17 right to appeal. If you cannot afford to file an appeal, you
18 can file a motion to proceed in forma pauperis. If you so
19 request, the clerk of court shall immediately prepare and file
20 a notice of appeal on your behalf.

21 Mr. Carnes, that concludes this hearing. Thank you
22 all for being here today on this very difficult day.

23 (Proceedings concluded at 11:10 a.m.)

24

25

1 C E R T I F I C A T E

2 I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM
3 THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.4
5 /s/Regina A. Lambrecht November 2, 2020
6 REGINA A. LAMBRECHT, RDR, CRR DATE
Official Court Reporter7
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